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June 8, 2011

VIA ELECTRONIC MAIL musante.jason@epa.gov and U.S. MAIL

Jason Musante
Federal On-Scene Coordinator
U.S. EPA Region IX
SFD-9
75 Hawthorne Street
San Francisco, California 94105

Re: Dominguez Channel Oil Spill – Comments of ACTA and the Ports on Crimson’s Project Plan for Investigation, Removal, Mitigation or Prevention of a Substantial Threat of Oil Discharge (Order No. OPA CWA 311-09-2011-0002)

Dear Mr. Musante:

As you know, this firm represents the Alameda Corridor Transportation Authority (“ACTA”). The Port of Los Angeles and the Port of Long Beach (together, the “Ports”) join in this letter through their respective counsel, Ken Mattfeld and Lisa Bond. This letter presents the comments of ACTA and the Ports on the May 3, 2011, Project Plan for Investigation, Removal, Mitigation or Prevention of a Substantial Threat of Oil Discharge (“Project Plan”) submitted by Crimson Pipeline L.P. (“Crimson”) with regard to the Dominguez Channel Oil Spill. The Environmental Protection Agency (“EPA”) issued the above-referenced Order to Crimson on March 30, 2011, having determined that the oil discharged to the Channel (the “Oil Spill”) originated from a leaking oil carrier pipeline owned and operated by Crimson.

First, we are concerned that more than two months have passed since EPA issued the Order to Crimson, yet Crimson has done no work on the ground. The next rainy season is just a few months away. Because Crimson has failed to take timely action to remove the source of the Oil Spill, to determine the extent of impact, and to clean up the oil, the Oil Spill poses a continued potential threat of discharge to the Channel, and the ultimate oil removal costs likely will be significantly higher than they would have been had Crimson taken timely action.

Second, ACTA and the Ports deny that they bear any responsibility or liability for the Oil Spill. Crimson states in several places within the Project Plan (including in footnote 2 and on page 16) that the casing around its pipeline was damaged during construction of ACTA’s storm drain system. Crimson has presented no evidence to support this contention, other than a photograph showing that the casing is broken. Moreover, Crimson cannot meet its heavy burden of proving that such alleged third party acts or omissions were the “sole cause” of the Oil Spill, that Crimson exercised “due care” with respect to the Oil Spill and took “precautions” against

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foreseeable acts or omissions of any such third party, that Crimson reported the Oil Spill as required by law, and that Crimson otherwise meets the requirements of 33 U.S.C. § 2703.

Third, Crimson improperly devotes several pages of the Project Plan to an attempt to minimize its liability – reading more like a legal brief than a workplan for the removal actions required by the Order. We understand that EPA will require Crimson to prepare and submit detailed work activity plans for each required element of the removal action required by the Order. We respectfully request the opportunity to review and comment on those work activity plans, and that EPA not allow Crimson to limit the scope of the work required of it under the Order based on a claim that a third party is somehow responsible. That is for Crimson to address in another forum, not here.

Fourth, we reiterate the request we have made to Crimson directly that ACTA and the Ports receive sufficient, advance notice of all field activities before they commence. This is important for several reasons. ACTA has strict safety protocols that all persons must follow when they enter ACTA's right-of-way. Thus, Crimson and its contractors must receive all required safety training, arrange for railroad flagmen, and take other precautions related to their work. Because ACTA's property has been impacted by the Oil Spill, and ACTA and the Ports have potential claims against Crimson for cost recovery and property damage, ACTA and the Ports are entitled to witness all of the work that occurs on ACTA's property or is related to Crimson's pipeline or casing, and to take photos, videos, and samples.

Fifth, we request that EPA not allow Crimson to cut into, alter in any manner, or remove its oil carrier pipeline or casing until ACTA and the Ports have had a reasonable opportunity to inspect the pipeline and casing. We also ask that EPA not allow Crimson to remove the pipeline or casing until Crimson has received all required regulatory agency approvals, including, but not limited to, EPA, California Department of Fish and Game, and the California Fire Marshal.

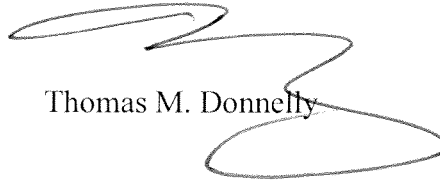
Sixth, Crimson still has not clearly stated that it will take over operation and maintenance of all the oil containment and collection systems. Crimson says it will do so on page 14 of the Project Plan, but then suggests later (on page 25) that it is in "discussions" with ACTA regarding this task. We respectfully request that EPA require Crimson to unequivocally state that it will take over complete operation and maintenance of all the oil containment and collection systems, including waste handling, storage, transport and disposal.

Finally, attached you will find ACTA's and the Ports' technical comments on the Project Plan.

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ACTA and the Ports will continue to cooperate with Crimson as it undertakes the work required by the Order, including by providing Crimson with reasonable access to the railroad right-of-way.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas M. Donnelly". The signature is stylized with a large, sweeping loop at the end.

cc: Andrew Helmlinger, EPA ORC
John Doherty, ACTA
Lisa Bond, POLB
Ken Mattfeld, POLA
Marcus Squarrell, Crimson

**Combined Review Comments of ACTA and the Ports on the Crimson Project Plan dated
May 3, 2011 for Dominguez Channel Oil Spill**

June 8, 2011

Section 1.0

The Youngstown Lateral is north of PCH in Wilmington, CA (the Plan states it is in the vicinity of Dominguez Channel and near Wilmington).

Figure 1, Collection Point – is this supposed to be for the Shell Lube Facility or 18" CSP? Please correct arrow.

Reference: Section 1, Last Paragraph - "This Project Plan is intended to address only the effects of discharges of crude oil into the ACTA french drain."

Comment: It is stated that the Project Plan is submitted "in compliance with Paragraph 14 of the Order for Removal, Mitigation or Prevention of a Substantial Threat of Oil Discharge No. OPA CWA 311-09-2011-0002" (Project Plan, Section 1.0). However, the statement limits the scope of activities, and fails to comply with Paragraph 14 of the Order which requires the Project Plan to address, among other things, "measures to clean up and remove all oil and petroleum contamination at all impacted areas of the Site."

Section 1.1

Indicates that Work Activity Plans will be submitted for all activities in Project Plan. ACTA and the Ports would like the opportunity to comment on these more specific plans before they are approved by EPA.

Section 1.2

- Indicates that a concise description of the activities necessary to comply with the Order is contained in the Project Plan. Some activities are not clearly or sufficiently described or defined, such as the extent of the assessment along the entire ACTA storm drain and the assessment means and methods, or the means and methods of contaminated soil removal or drain replacement.
- Language seems to focus on mitigation of release as opposed to cleanup of the contamination. See penultimate paragraph.

Include Shell and Tesoro since oil expression is on their property (refer to b.vi. and b.vii.).

Section 1.2(e)

The Schedule in Appendix C is incomplete and needs clarification.

Section 2.1

Add coordination with City of LA Watershed Protection Division. Also should note in the Plan that oil was removed from storm drain system in March 2011 and the City of LA WPD then accepted operation and maintenance of its system.

Section 2.2

Language derived from ACTA Work Activity descriptions should be revised based on ACTA's Closure Reports which better describe the extent of actual work performed and means and methods

	used. For example, augers were not used to install pipes (paragraph 3)
	<p>Update to include actual not proposed. Please note oil collection wells adjacent to the Shell Lube Facility are on Tesoro property (Shell is a tenant).</p> <p>Figure 5, correct layout of City of LA storm drain system, at a diagonal and crosses under the railroad tracks before entering the lift station on the west side.</p>
	<p><u>Reference</u>: Section 2.2 – “The following summary of emergency response actions and investigations performed by ACTA and EPA is based on information provided in ACTA’s Work Plans and recent discussions with ACTA personnel.”</p> <p><u>Comment</u>: The status described for several of the response actions included in subparts of Section 2.2 leave the impression that significant ACTA actions are ongoing, when in fact they have been completed. Since Section 2.2 forms a basis for future actions, it should be as current and accurate as possible.</p>
Section 2.2.1	
	Paragraph 3. Describe current manifold and baker tank system.
Section 2.2.2	
	<ul style="list-style-type: none"> • Additional reaches were videotaped. In last paragraph it is unclear as to whether the report referred to is ACTA’s or Crimson’s. • Figure 4: Storm drain alignment on west side along Shell facility is incorrect.
Section 2.2.3	
	Last paragraph. Does this cleaning/disposal refer to an effort by Crimson or ACTA?
Section 2.2.4	
	This pledged take-over of oil containment is less definitive elsewhere in the Plan.
	<p><u>Reference</u>: Section 2.2.4, Last paragraph – “Crimson intends to take over operation of the containment and collection facilities and ongoing response activities at the Shell Lube Plant and at the Collection Area as described above.”</p> <p><u>Comment</u>: This Crimson Response Action is not included in the Project Schedule in Appendix A. Absent a schedule for this Response Action, the Plan fails to comply with Paragraph 14e of the Crimson Order.</p>
Section 3.1.1	
	Paragraph 2: Was the casing flushed west to east or east to west as previously understood?
Section 3.1.2 – Source Investigation	
	ACTA did not participate in the east side seal examination in October 2010 (not March 2011 as stated), nor was it notified. ACTA was present for a partial reveal of the west side seal in March. Also the circumferential crack was not complete (360 degrees), but partial (270 degrees) as reported in the field by Crimson’s inspector. It is stated that damage could not be detected until drain was

	removed, but other electrical or pressure testing for integrity could have been performed in October 2010. The last sentence is misleading as the leaking pipe has been identified by EPA as the source of the oil spill.
	It is premature, and inappropriate in a Project Plan, for Crimson to declare that <i>"This further confirmed that the pipeline was not an active contribution source to the release."</i>
	ACTA did not witness the condition of the east side casing seal or the complete condition of the west side casing seal (beyond the damaged top edge).
Section 3.1.3	
	What is the status of these property access negotiations and when will they be completed? When will this work occur? The description of items in the schedule does not clearly tie to this activity. Is this section intended to cover the extent of contamination in other than just the immediate area of the pipeline; i.e. the entire reach of storm drain and cross passageways if any?
	If this a preliminary plan, when will the final be prepared and submitted?
Section 3.1.4	
	<p>ACTA and the Ports request that they be included in the discussions with the various entities concerning the means and methods of testing the removed pipe and casing and the preserving of evidence. It is presumed that more detail will be provided in the Work Activity submissions and that ACTA will be able to review and comment on them prior to EPA approval.</p> <p>Casing cross-sections: The casing appears to have a break in longitudinal profile at the location of the damage. Please provide the survey data that was gathered by Crimson's survey crew during the March 2011 exploratory excavations.</p>
Section 3.1.4.1	
	State range of pipe lengths instead of "undetermined." Provide details on how removed carrier pipe will be handled during and following removal.
Section 3.1.4.2	
	Suggest inspecting before and after cleaning. Provide details on how inspection will occur.
Section 3.1.4.3	
	Provide details on how CA State Fire Marshall will investigate the pipe(s).
Section 3.1.4.4	
	Prior to abandonment of the casing, ACTA needs information regarding Occidental and Tesoro's plans to access the Youngstown wells in the future.
	Include type of sand and cement slurry. How will it be filled?
Section 3.2	
	Include access agreements with the Ports.

Section 3.2.1	
	More information is needed regarding the access agreements Crimson is seeking from the railroads and others. This section understates the known conditions and does not adequately acknowledge the potential longitudinal extent of the contamination and the complexity to assess the contamination and remove it in an operating railway environment.
	How will area be assessed -- visual, PID, sample collection?
Section 3.2.2	
	Update; Crimson has received the requested information from ACTA.
Section 3.2.3.1 - Areas of Identified Blockages in the French Drain System	
	What is meant by "dispersion of separate crude oil" in paragraph 1? Declaration in last sentence of paragraph 1 is premature as entire portions of the system may need replacement following the extent of contamination assessment activities. In paragraph 3 it refers to investigation in "select areas of the french drain system". However, these representative locations must be numerous enough to draw reasonable and supportable conclusions regarding the condition of the entire length of the storm drain system.
	Crimson's assumption that the oil removal actions "... <i>will likely require the free flow of liquid from the French drain system to the collection area...</i> " does not consider the potential that such action may cause contamination to spread into the subsurface.
	Add approval will be obtained from ACTA and the Ports.
Section 3.2.5	
	The description of the expression as fluid rising to the surface is not accurate due to the special drain design features in this area.
	Provide details on how investigation will be performed.

Section 3.2.6	
	More detail is required regarding this proposed retention pond analysis as this pond has historically been used as a separator facility and may have other contributory sources.
	EPA's contractor recovered oil and removed impacted vegetation from Shell's pond, not NRC. Shell is currently maintaining its booms. Provide details on how investigation will be performed.
Section 3.2.7	
	Refer to Section 3.2.6 comments.
Section 3.2.8	
	Early in the Plan, it indicates that Crimson will be taking over oil containment and disposal operations, but handling, storage and disposal of current and future waste accumulations is not addressed in the Plan or in this section in particular. Please address.
	Include details on how outfall discharge will be investigated.
Section 4.1.1 - Management, Inventory and Labeling	
	The description of procedures is more suited to the initial management of waste during a spill and not that for an investigation and cleanup.
	Note that POLA Temporary Entry and Use permit will be obtained.
4.2 – Disposal Facilities	
	<p>3rd paragraph. -<i>"The Crude oil generated from this project is a recyclable material and will be placed into Crimson inventories for delivery to end user refineries."</i></p> <p>Since the cleanup actions to be taken are under an EPA Order, does EPA agree that the waste oil would be just "... a recyclable material ..." to be placed in "Crimson inventories," or should it instead be properly sampled, profiled, and sent offsite to a proper disposal facility?.</p>
	Include ballast, pads and booms. On-site discussions between Crimson's representative and DFG stated the possibility of injecting oily water into deep wells and the possibility of disposing of it in Nevada. Does EPA concur?
Section 5.0	
	Define collection area and waste management areas.

APPENDIX B- Sampling & Analysis Plan

General:

Depth to groundwater varies across site (about 40' at PCH, and 3' near channel).

Include details on how soil samples will be collected from storm drain system and adjacent areas impacted by blockages; these cannot be accessed with spades, hand augers, or geo probes.

Include information on ballast and/or sub-ballast samples. State where and how soil samples will be collected and how sampling activities will be coordinated with train traffic. Discuss water samples for profiling of waste (since already performed).

Section 2.0

ACTA = Alameda Corridor Transportation Authority, be consistent. Background data not complete.

Section 3.0

Section only discusses laboratory validation and does not include field validation.

Section 3.1

Evaluating limits of impacts is not the same as preventing oil discharge.

Section 3.2

Identify and discuss specific ARARs.

Section 3.5

Provide details on how this will be performed, such as forms, check marks, etc.

4.0 - Sampling Rationale

- *"Experience has shown at many crude oil sites that TEPH may be used as a surrogate for cleanup for VOCs and SVOCs".*

- Using TEPH as a surrogate for VOCs and SVOCs may not be appropriate to determine site cleanup here. Please explain rationale.
- Provide reference(s) for other documented detectable COPCs at the Site. Provide brief discussion on location of COPCs including type and concentrations.

Section 4.1

Include mercury for Title 22 metals. Along ACTA ROW, depth of samples may vary based on field observations; however, sample locations need to be provided in a plan before work begins.

Section 4.1.1

The collection of samples using hand augers and spades will not work in ballast, and sub-ballast

	material. Include details on how each sample location will be accessed, type of equipment to be used, how to transport equipment to each location, how many borings/locations estimated each day, and locations and time necessary in relation to track outages. For the Shell Lube Plant, the oil expression and collection wells are actually on Tesoro/Shell property. For the storm drain system, ballast and/or sub-ballast (not soil) has been placed at the 0.5 and 2 foot level. Discuss sample and analytical methods for this material or revise depths.
Schedule	
	Overall: Very general, tasks are out of order, new tasks are introduced but not discussed in Project Plan, tasks discussed in Project Plan are not included, any permitting, approvals and agreements are not shown, and relationship between tasks is not identified.